



**State of New Hampshire  
DEPARTMENT OF ENVIRONMENTAL SERVICES**

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095  
(603) 271-3503 FAX (603) 271-2982



James F. Craven, President  
Homes by Craven, Inc.  
West Meadow Road  
Townsend, MA 01469

Re: New Ipswich Tax Map 10  
Lots 6 and 14

**ADMINISTRATIVE ORDER  
BY CONSENT  
No. WD 02-21  
June 3, 2002**

**A. INTRODUCTION**

This Administrative Order by Consent is issued by the Department of Environmental Services, Water Division to, and with the consent of, James F. Craven, President, Homes by Craven, Inc. pursuant to RSA 485-A:22 and RSA 482-A:6. This Administrative Order by Consent is effective upon signature by both parties.

**B. PARTIES**

1. The Department of Environmental Services, Water Division ("DES"), is a duly constituted administrative agency of the State of New Hampshire, having its principal office at 6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095.
2. Homes by Craven ("Craven") is a Massachusetts corporation having a mailing address of 22 West Meadow Road, West Townsend, MA 01474.

**C. STATEMENTS OF FACTS AND LAW**

1. Pursuant to RSA 485-A:17, DES regulates significant alteration of terrain and erosion control through a permit program. Pursuant to RSA 485-A:6, VIII, DES has adopted NH Administrative Rules Env-Ws 415 to implement this program.
2. RSA 482-A authorizes DES to regulate dredging, filling, and construction in or on any bank, flat, marsh, wetland, or swamp in and adjacent to any waters of the state. Pursuant to RSA 482-A:11, I, the Commissioner of DES has adopted Wt 100 *et seq.* to implement this program.
3. Craven is the owner of property located on Stowell Road, New Ipswich, NH more particularly identified on Town of New Ipswich Tax Map 10 as Lots 6 and 14 ("the Property").
4. Oliver Niemi is the owner of property located off Stowell Road, New Ipswich, NH more particularly identified on Town of New Ipswich Tax Map 10 as Lot 10. Mr. Niemi has indicated to DES that he will be transferring ownership of this parcel to Craven in the near future, and had granted Craven permission to commence work on the property prior to the

transfer. For the purposes of this Administrative Order by Consent, the Niemi land will be included as part of "the Property."

5. RSA 482-A:3, I states that "[no] person shall excavate, remove, fill, dredge or construct any structures in or on any bank, flat, marsh, or swamp in and adjacent to any waters of the state without a permit from [DES]."

6. RSA 482-A:14, III provides that "(f)ailure, neglect or refusal to comply with [RSA 482-A] or rules adopted under [that] chapter, or an order or condition of a permit issued under [RSA 482-A], and the misrepresentation by any person of a material fact made in connection with any activities regulated or prohibited by [RSA 482-A] shall be deemed violations of RSA 482-A".

7. Env-Ws 415.02(y) defines significantly altering terrain to include disturbing more than 100,000 square feet of contiguous area.

8. RSA 485-A:17 requires any person who proposes to significantly alter the terrain to obtain a permit from DES prior to initiating the work.

9. Env-Ws 415.09(i) and (k) require employment of temporary and permanent methods for preventing soil erosion and controlling runoff.

10. Env-Ws 415.09(j) requires construction phasing and sequencing, including methods for limiting the length of time of exposure of unstabilized soils.

11. On April 8, 2002, DES received a complaint from the Town of New Ipswich Conservation Commission alleging that Craven had cleared and stumped in excess of 100,000 square feet of land on the Property, had not implemented erosion control measures on the Property, and had impacted wetlands and surface waters on the Property.

12. On April 11, 2002, DES personnel conducted a field inspection of the Property. During the inspection, DES personnel observed:

- a. Site disturbance in excess of 100,000 square feet without a site specific permit from DES;
- b. The disturbed area was not stabilized;
- c. Erosion control measures were not installed on the Property;
- d. The hydrology of the site had been altered by construction activities on the Property;
- e. Sediment had entered forested wetlands adjacent to disturbed areas on the Property, and slopes adjacent to wetlands were unstable;
- f. Dredging (rutting) of approximately 40 linear feet each of 2 seasonal streams on the Property;

- g. The channel of a third seasonal stream had been dredged and sediment had entered the downstream portion of the stream, impacting an approximate total of 106 linear feet of stream channel;
- h. There was fill (sediment) in a perennial stream impacting approximately 300 linear feet of stream channel;
- i. There was fill (sediment) in a second perennial stream impacting approximately 160 linear feet of stream channel;
- i. A trench had been dredged in a forested wetland, impacting approximately 315 square feet; and
- j. Three culverts had been installed within wetlands without a permit from DES.

13. On April 16, 2002, DES personnel conducted a second field inspection of the Property. During the inspection, DES personnel observed the following:

- a. Stabilization of the disturbed area was in progress;
- b. Erosion control measures were being installed on the Property; and
- c. All other conditions observed during the first inspection were still present.

14. A review of DES records shows that neither a standard "Dredge and Fill" permit application nor an "Alteration of Terrain" (site specific) permit application had been submitted by Craven for the activities described in Paragraph 11 on the Property.

#### **D. DETERMINATION OF VIOLATIONS**

- 1. Craven has violated RSA 485-A:17 by altering more than 100,000 square feet of terrain without a permit from DES.
- 2. Craven has violated RSA 485-A:17 and Env Ws 415.09(i) by failing to install erosion control measures on the Property.
- 3. Craven has violated RSA 485-A:17 and Env Ws 415.09(j) by failing to stabilize areas within the Property.
- 4. Craven has violated RSA 482-A:3, I by placing fill in wetlands and surface waters of the State, located on the Property without a permit from DES.
- 5. Craven has violated RSA 482-A:3, I by dredging and filling perennial and seasonal streams for the purpose of installing culverts without a permit.

### **E. ORDER**

Based on the above findings, DES hereby orders Craven, and Craven agrees, to undertake and complete the following actions in accordance with the time schedules specified:

1. Within 5 days of this Order, prepare a temporary stabilization plan ("Plan") for the Property, and submit the Plan to DES for approval. The Plan shall include a schedule for implementing the measures described in the Plan.
2. Implement the approved Plan according to the schedule detailed in the Plan.
3. Within 20 days of the date of this Order, submit to DES an application for a Site Specific permit for the Property. The application shall be prepared by an engineer licensed in the State of New Hampshire, and in accordance with Env-Ws 415.05.
4. Within 20 days of the date of this Order, submit to DES an application for a wetlands permit for the Property.
5. Within 20 days of the date of this Order, submit a restoration plan for the restoration or mitigation of the impacted wetlands and surface waters to DES for review and approval. The restoration plan shall be prepared by a certified wetland scientist, and shall include:
  - a. A plan with dimensions, drawn to scale, showing:
    - i. existing conditions on the sites, with wetland boundaries and land topography; and
    - ii. proposed conditions after reestablishing the jurisdictional areas;
  - b. A detailed description of the proposed means of erosion control (silt fence, hay bales, etc) and stabilization of the restoration area;
  - c. A detailed description of the proposed planting plan for the stabilization and revegetation of the restoration and mitigation areas;
  - d. A description of the proposed construction sequence, equipment. methods for accomplishing restoration and anticipated restoration compliance date; and
  - e. A description of the method of documenting at least 75% survival of all vegetation planted during the restoration project. This should include at a minimum monitoring progress reports for two successive growing seasons following completion of the restoration project. These reports should be submitted to DES on September 15, 2002, and September 15, 2003.
6. Retain a certified wetland scientist to supervise the implementation of the restoration plan prepared in accordance with Paragraph E.5 above and to submit the restoration progress reports.
7. Implement the restoration plan proposed in accordance with Paragraph E.5 above only after receiving written approval and as conditioned by DES.


8. Submit the completed Site Specific and Wetlands applications, restoration plan, including erosion and sediment control plans, and other submissions made in connection with this Administrative Order by Consent to DES as follows:

Ana Ford  
Site Specific Program  
DES Water Division  
6 Hazen Drive - P.O. Box 95  
Concord, NH 03302-0095

**F. CONSENT AND WAIVER OF APPEAL**

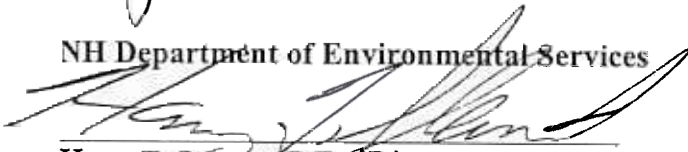
1. By execution of this Administrative Order by Consent, Craven agrees that this Order shall apply to and be binding upon Craven, its officers, directors, successors and assigns and agrees that this Order may be entered and enforced by a court of competent jurisdiction.
2. By execution of this Administrative Order by Consent, Craven waives any right to appeal this Administrative Order by Consent provided by statute, rule, or common law, including without limitation the right to appeal to the Water and Wetlands Councils, and waives any right to object to the entry and enforcement of this order by a court of competent jurisdiction.

**Homes by Craven, Inc.**

  
By: J. Craven President

6-20-2002  
Date

NH Department of Environmental Services

  
Harry T. Stewart, P.E., Director  
Water Division

7/13/02  
Date

  
George Dana Bisbee, Assistant Commissioner

7/13/02  
Date

cc: Gretchen Rule, DES Legal Unit  
Charles Knox, Public Information Officer  
MaryAnn Tilton, WET, WD, DES  
Town of New Ipswich Planning Board  
Town of New Ipswich Conservation Commission  
Oliver Niemi  
Holden Engineering